STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
Hoekstra, P.J., Sawyer, J., Borrello, J.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TIA MARIE-MITCHELL SKINNER,

Defendant-Appellee.
_____/

Supreme Court No. 152448

Court of Appeals No. 317892

St. Clair Circuit Court No. 10-2936

The appeal involves a ruling that a provision of the Constitution, a statute, rule or regulation, or other State governmental action is invalid.

BRIEF OF AMICUS ATTORNEY GENERAL IN SUPPORT OF ST. CLAIR COUNTY PROSECUTOR

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STATEMENT OF QUESTION PRESENTED

In its January 24, 2017 order granting leave on the merits of the prosecution's application, the Court identified one question for review:

1. Whether the decision to sentence a person under the age of 18 to a prison term of life without parole under MCL 769.25 must be made by a jury beyond a reasonable doubt, see *Apprendi v New Jersey*, 530 US 466, 476 (2000), in light of *Montgomery v Louisiana*, 136 S Ct 718 (2016), and *Miller v Alabama*, 132 S Ct 2455 (2012).

Appellant's answer:	No.
Amicus Attorney General answers:	No.
Appellee's answer:	Yes.
Trial court's answer:	No.
Court of Appeals' answer:	Yes.

INTRODUCTION

Under Michigan law and under precedent from the U.S. Supreme Court, no specific finding of fact is necessary to support the imposition of a life-without-parole sentence for juvenile murderers. Indeed, in explaining *Miller v Alabama,* 132 S Ct 2455 (2012), the Supreme Court expressly stated that "*Miller* did not impose a formal factfinding requirement," *Montgomery v Louisiana,* 136 S Ct 718, 735 (2016).

Rather, *Miller* mandated an individualized sentencing scheme for these offenders. And Michigan's statute complies with *Miller*. The Legislature created a process in which the court may impose either a sentence of a term-of-years or life without parole once a jury issues its verdict and the prosecution files a motion for such a sentence. While a life-without-parole sentence may be appropriate for only the rare offender, still the jury verdict by itself fully authorizes that sentence and no additional fact is essential to support it. The particular sentence is the sentencing court's decision. Michigan law thus comports with the Sixth Amendment.

Consistent with the St. Clair County Prosecutor's persuasive affirmative argument, three basic errors underlie the contrary view of the law.

First, Skinner's argument that the Sixth Amendment is violated because the term-of-years' sentence is the statutory default sentence misunderstands the law. The Supreme Court is clear that a sentencing court may not make a required finding of fact to elevate a sentence. But there is no factual prerequisite for life-without-parole, and Michigan's statute does not create one. While the prosecution must file a motion to trigger this possibility, that is not a factual requirement, and once filed, the Michigan statute creates no sentencing presumption.

Second, Michigan's statute – requiring the sentencing court to consider the *Miller* factors and to place on the record its consideration of the aggravating and mitigating circumstances – does not run afoul of the Sixth Amendment. The range of sentences authorized by a jury verdict against a juvenile murderer, like Tia Skinner, is either a term of years or life without parole, where the prosecution seeks such a sentence. The Supreme Court has expressly explained that a verdict that authorizes a sentencing court to select a sentence within a range does not violate the Sixth Amendment. Such is the case here. Judicial fact-finding in making the decision of which sentence to impose within the statutorily created range is consonant with the Sixth Amendment. It does not increase the maximum.

Third, "irreparable corruption" or "permanent incorrigibility" do not constitute discrete facts that must be found. They are overarching values, similar to proportionality. For that reason, the U.S. Supreme Court can affirm both that no specific factual finding is required for a constitutional life-without-parole sentence and that life without parole is excluded for juvenile offenders as a class for those whose crimes reflect only "transient immaturity." The sentencing process envisioned by the Court asks the sentencing court to consider the juvenile's individual circumstances, most notably the offender's youth and youth's attendant characteristics, including the ability to reform. But the likelihood that the life-without-parole sentence will be rare is not a legal standard. Under Supreme Court precedent, a life-without-parole sentence remains a possible sentence, and no fact is necessary to be found before it is imposed.

STATEMENT OF FACTS AND PROCEEDINGS

The Attorney General as amicus adopts the statement of facts and proceedings as provided in the brief for the St. Clair County prosecutor.

STANDARD OF REVIEW

This Court reviews issues of law de novo. *People v Hall,* 499 Mich 446, 452 (2016).

ARGUMENT

I. The sentencing court, not the jury, has the authority to decide whether to impose a term-of-years' or a life-without-parole sentence.

The Michigan sentencing scheme authorizes the sentencing court to impose a life-without parole sentence where the jury convicts the juvenile of first-degree murder and the prosecution seeks that sentence. The law does not require any predicate factual finding. In short, the Sixth Amendment is not implicated.

In arguing to the contrary, Skinner's analysis reflects several mistakes. A sentence of a term of years is not the default, and the requirement of Michigan law that the sentencing court consider the *Miller* factors does not mean that any factual finding is a prerequisite to life without parole. No specific finding elevates the maximum sentence. LWOP *is* the maximum sentence. It falls within the range of punishment authorized by the jury's findings. Any factual findings that support a sentencing court's decision would therefore be consistent with the Sixth Amendment. It is like other sentences that fall within the range of sentences created by the Legislature. And that only an offender whose crime reflects an irreformable character – "irreparable corruption" or "permanent incorrigibility" – should be given life without parole is not a finding, but the measure of proportionality.

A. A jury verdict convicting a juvenile murderer of first-degree murder authorizes a life-without parole sentence without any necessary factual finding.

Under the Sixth Amendment, any fact that increases the penalty for a crime beyond the statutory maximum must be found by the jury and proven beyond a reasonable doubt. *Blakely v Washington,* 542 US 296, 299 (2004), citing *Apprendi v New Jersey,* 530 US 466, 490 (2000). Any fact that exposes a criminal defendant to "greater punishment" than what the jury verdict authorizes is considered a sentencing "element" that must be submitted to the jury. *Hurst v Florida,* 136 S Ct 616, 621 (2016); see also *Alleyne v United States,* 133 S Ct 2151, 2166 (2013); *Ring v Arizona,* 536 US 584, 604 (2002). The key to this analysis is identifying the true substantive maximum, not just what is listed within the statute, because the Supreme Court has examined not merely the "form" but the "effect" of the law. *Ring,* 536 US at 602.

Significantly, the relevant maximum is not the maximum that may be imposed "after finding additional facts," but that may be imposed "without any additional findings." *Cunningham v California,* 549 US 270, 275 (2007), citing *Blakely,* 542 US at 303–304. The list of factors considered at sentencing may be "non-exhaustive," *Cunningham,* 549 US at 282, or "illustrative," *Blakely,* 542 US at 299, but fact-finding counts as an element if the enhanced sentence "depends" on that finding. *Id.* at 304 ("Whether the judge's authority to impose an enhanced sentence *depends* on finding a specified fact (as in *Apprendi*), one of several specified facts (as in *Ring*), or any aggravating fact (as here), it remains the case that the jury's verdict alone does not authorize the sentence"); *Ring,* 536 US at 593

("The State's law authorizes the judge to sentence the defendant to death *only if* there is at least one aggravating circumstance") (emphases added).

Michigan law requires no such necessary factual finding. In responding to the Supreme Court's jurisprudence in *Miller,* the Legislature created a two-track system of sentencing. MCL 769.25, 769.25a. In one track, where the prosecution does not seek a life-without-parole sentence, the only sentence available is a term of years, with a range of 25 to 40 years on the minimum and 60 years on the maximum. MCL 769.25(4), (9); MCL 769.25a(4)(c).[1] In the other track in which the prosecution seeks a life without parole sentence, the sentencing court then has the option of selecting between a life-without-parole or a term of years' sentence. MCL 769.25(2), (3); MCL 769.25a(4)(b). This two-track system applies both to juvenile offenders convicted of first-degree murder whose cases arose after *Miller* and to those whose cases that were final at the time *Miller* was made retroactive.

In the second track that includes life-without-parole sentence within the range, the Legislature requires the sentencing court to "consider the factors listed in *Miller*" in making its determination and permits it to "consider any other criteria relevant to its decision." MCL 769.25(6). The court must also "specify on the record the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed." MCL 769.25(7).

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[1] For those cases that arise after *Miller,* the Legislature provided for a term of years' maximum that is "not less than 60 years," MCL 769.25(9), while for those offenders whose cases were final and the prosecution does not seek a life-without-parole sentence, the term of years' maximum "shall be 60 years," MCL 769.25a(4)(c).

Notably, the Legislature did not identify any specific finding as necessary or essential to the decision to impose life-without parole. In short, no fact-finding is a prerequisite. That this decisional process may involve factual determinations is of no moment because a sentencing decision within a range provided by law that is "informed by judicial factfinding, does not violate the Sixth Amendment." *Alleyne,* 133 S Ct at 2163. The central inquiry under the Sixth Amendment is whether any factual determination is a precondition to the sentence at issue. There is no such required finding here. Thus, no Sixth Amendment violation occurs.

The sentence scheme comports with, and gives effect to, the decision in *Miller*. The U.S. Supreme Court in *Miller* abolished the mandatory nature of the life-without-parole sentence for juvenile murderers. In its place, *Miller* requires an individualized sentencing process, in which all of the characteristics of the offender and offense may be considered at sentencing. *Id.* at 2460 ("requirement of individualized sentencing for [juvenile] defendants facing the most serious penalties"). *Miller* provided a list of factors that the sentencer may consider in its "recap" summary:

> Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features among them,
>
> [1] immaturity, impetuosity, and failure to appreciate risks and consequences.
>
> [2] . . . family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional.
>
> [3] . . . the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him.

> [4] . . . [how] he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.
>
> [5] . . . the possibility of rehabilitation[.] [*Id.* at 2468 (numbering and paragraph breaks added; citations omitted).]

But no factor or factual finding was singled out as the sine qua non of a life-without-parole sentence.

To the contrary, in its decision to make *Miller* retroactive, the Court expressly confirmed that *Miller* created no fact-finding obligation: "*Miller* did not impose a formal factfinding requirement." *Montgomery,* 136 S Ct at 735; *id.* ("this finding [of incorrigibility] is not required"). And the Court in *Montgomery* twice made reference to "sentencing courts" who would be making these decisions under *Miller* about whether to impose a life-without parole sentence. *Montgomery,* 136 S Ct at 726, 734. While not a dispositive statement, it is consistent with the conclusion that the individualized sentencing process in *Miller* has not created new sentencing elements that require a jury's determination under the Sixth Amendment.

The cases from the U.S. Supreme Court that have found violations for other statutory schemes are inapposite. In those cases that have applied *Apprendi* and found a Sixth Amendment violation, the sentencing court made a fact finding that was essential to the imposition of a greater sentence. See, e.g., *Alleyne,* 133 S Ct at 2160 (elevating punishment from a five-year mandatory sentence to a seven-year one based on sentencing court's finding that defendant brandished a firearm);

Cunningham, 549 US at 292 (elevating the sentence from 12 to 16 years based on aggravating facts found by the sentencing court that were outside the elements of the charged offense); *Blakely,* 542 US at 304 (elevating the punishment from 53 months to 90 months based on substantial and compelling reasons that justified the departure upward from the sentencing court's findings that were made outside of the defendant's plea); *Ring,* 536 US at 604 (elevating punishment from life imprisonment to death based on sentencing court's finding that one of the listed aggravating circumstances were present); *Apprendi,* 530 US at 494–495 (elevating the punishment from 10 years to 20 years based on the sentencing court's finding that the crime involved intimidating the victim as a hate crime).

The same dynamic is not at issue here. Michigan law does not condition a life-without-parole sentence on the sentencing court making a specific additional finding. The statute does not create a presumption. While the U.S. Supreme Court explained that the juvenile's ability to reform "counsel[s] against" a life-without-parole sentence, *Miller,* 132 S Ct 2469 ("we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison"), it did not foreclose this option. And it has not established any factual finding as a prerequisite to its imposition.

B. Skinner's argument that the decision requires a decision by a jury is predicated on three different legal errors.

The errors of the contrary view – appearing in Skinner's argument and the majority decision of the Court of Appeals – may be digested into three categories.

These errors are: (1) the Michigan sentencing scheme creates a sentence of a term of years as a default sentence; (2) the requirement that the sentencing court consider the *Miller* factors means that any findings are threshold hurdles that need to be overcome before a life-without-parole sentence may be imposed; and (3) "irreparable corruption" and "permanent incorrigibility" are discrete facts essential to a life-without-parole sentence. These claims are mistaken.

1. The Michigan sentencing scheme authorizes a life-without-parole sentence based on the jury verdict alone.

One of the central themes of Skinner's brief is the assertion that the sentencing statute in Michigan for first-degree juvenile murderers, MCL 769.25, creates a "default term of years' sentence." Skinner's Brief, p 22. The majority decision of the Court of Appeals concluded the same. Slip op, p 8 ("the Michigan Legislature created a default sentence for juvenile defendants convicted of first-degree murder"). This misunderstands the law. While it is true that in the absence of the prosecution's filing, a defendant is subject only to a sentence of a term of years, this is not significant for the purposes of the Sixth Amendment. The Michigan statutory scheme does not require any additional factual finding before authorizing life-without parole. In that sense – and it is the only legally relevant sense – the sentence of a term of years is not a default. That is the dispositive point.

As noted earlier, the Michigan sentencing scheme creates two possible sentences for a juvenile offender convicted of first-degree murder, either a sentence of a term of years or a life-without-parole sentence. MCL 769.25(3), (4), (9); MCL 769.25a(4)(b), (c). The latter is dependent on the prosecution filing a motion. *Id.*

In this way, the sentence of a term of years is the "default" sentence. This Court said that very thing. See *People v Carp,* 496 Mich 440, 458 (2014) ("MCL 769.25 now establishes a default sentencing range for individuals who commit first-degree murder before turning 18"), vacated on other grounds, *Davis v Michigan,* 136 S Ct 1356 (2016). But this type of default is not legally significant here.

The critical question under U.S. Supreme Court jurisprudence is whether the sentence is greater than the maximum sentence because the enhanced sentence may be imposed only if some factual finding – any factual finding – is *required* before that sentence may be imposed. The point is that all the necessary factual findings must be found by the jury, not the court. The theme runs throughout the Supreme Court cases applying *Apprendi*. See, e.g., *Alleyne,* 133 S Ct at 2158 ("*Facts* that increase the mandatory minimum sentence are therefore elements and must be submitted to the jury and found beyond a reasonable doubt"); *Cunningham,* 549 US at 274–275 ("the Federal Constitution's jury-trial guarantee proscribes a sentencing scheme that allows a judge to impose a sentence above the statutory maximum *based on a fact*, other than a prior conviction, not found by a jury or admitted by the defendant"); *Blakely,* 542 US at 303–304 ("the relevant "statutory maximum" is . . .the maximum [the court] may impose without *any additional findings*"); *Ring,* 536 US at 602 ("If a State makes an increase in a defendant's authorized punishment contingent on the *finding of a fact*, that fact—no matter how the State labels it—must be found by a jury beyond a reasonable doubt") (emphases added). The triggering event is judicial fact finding, not prosecution motions.

And that is the point here. Michigan's statute does not require any additional finding. Once the prosecution files the motion, the verdict – and the verdict alone – is factually sufficient to support the life-without-parole sentence, as long as the sentencing process is an individual one. That is why life without parole is not a sentence above the maximum. Rather, consistent with the Supreme Court's analysis, the sentence of life without parole is within the authorized range where the prosecution files the motion.

2. The requirement that the sentencing court consider the *Miller* factors does not mean that a factual finding is necessary for a life-without-parole sentence.

Related to this argument, both Skinner and the majority decision in *Skinner* reason that the Michigan statutory scheme requires factual findings as a predicate to life without parole because it directs the sentencing court to consider the *Miller* factors in determining whether to impose that sentence. Skinner's Br, p 28 ("state law requires that the sentencing court make findings of fact, including any aggravating facts that could justify a sentence greater than a term of years' sentence"); slip op, p 18 ("what is critical is that the trial court in this case acquired authority to enhance defendant's sentence from a term of years to life without parole 'only upon finding some additional fact.' "). Not so. This is a misreading of Michigan law.

Once the prosecution files the motion for life without parole, Michigan's statute does not prefer a sentence of a term of years over a life-without-parole sentence. The statute, instead, requires an individualized sentence, one that considers both aggravating and mitigating circumstances:

> (6) If the prosecuting attorney files a motion under subsection (2), the court shall conduct a hearing on the motion as part of the sentencing process. At the hearing, *the trial court shall consider the factors* listed in *Miller v Alabama*, [132 S Ct 2455] (2012), and *may consider any other criteria relevant* to its decision, including the individual's record while incarcerated.
>
> (7) At the hearing under subsection (6*), the court shall specify on the record the aggravating and mitigating circumstances considered by the court* and the court's reasons supporting the sentence imposed. The court may consider evidence presented at trial together with any evidence presented at the sentencing hearing. [MCL 769.25 (emphasis added).]

Nothing in these directions indicate that the sentence of a term of years is the default and that the prosecution has the burden of overcoming a presumption. To the contrary, insofar as there is a burden, it is fair to read the statute as placing the burden on the court itself to exercise its judgment and make the decision.[2]

And that makes sense. The decisions in *Miller* and *Montgomery* ensured an individualized sentencing process. *Miller,* 132 S Ct at 2460 ("Such a scheme [that mandatorily imposes life without parole] prevents those meting out punishment from considering a juvenile's 'lessened culpability' and greater 'capacity for change,' and runs afoul of our cases' requirement of individualized sentencing for defendants facing the most serious penalties"); *Montgomery,* 136 S Ct at 725 ("the Court held in *Miller* that a juvenile convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile's special circumstances in light of the principles and purposes of juvenile sentencing"). It did not impose any specific factual findings that were necessary for a life-without-parole sentence.

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[2] Another reading suggests that the statute presumes a life-without-parole sentence. See MCL 769.25(9) ("*If* the court decides not to sentence the individual to imprisonment for life without parole eligibility, the court shall sentence the individual to a term of [years]")(emphasis added).

It is clear that the sentencing courts, in complying with Michigan's sentencing scheme, including its requirements of considering the *Miller* factors and of specifying what aggravating and mitigating circumstances it has considered, MCL 769.25(6), (7), will ordinarily make findings of fact. But these are not "any aggravating fact[s]" as identified in *Blakely,* 542 US at 305, which are necessary for a life-without-parole sentence. This is the exercise of discretion that properly includes "judicial factfinding":

> Our ruling today does not mean that any fact that influences judicial discretion must be found by a jury. We have long recognized that broad sentencing discretion, *informed by judicial factfindin*g, does not violate the Sixth Amendment. [*Alleyne,* 133 S Ct at 2163 (emphasis added).][3]

This analysis hinges on the point that the sentencing court explains its decision to elect between different permissible sentences within a legislatively established range authorized by the jury verdict through these findings:

> We should be clear that nothing in this history suggests that it is impermissible for judges to exercise discretion – taking into consideration various factors relating both to offense and offender – in imposing a judgment *within the range prescribed by statute.* [*Apprendi,* 530 US at 481 (emphasis added).]

The findings at issue here are just that, an explanation of the sentencing discretion to impose a sentence, whether life without parole or a sentence of a term of years. But the decision between these two sentence approaches was within the statutory limits. That really is the end of the inquiry.

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[3] See also *Dillon v United States,* 560 US 817, 828–829 (2010) ("the exercise of such discretion does not contravene the Sixth Amendment even if it is informed by *judge-found facts*") (emphasis added).

3. The conclusion that a juvenile murderer's crime did not reflect "irreparable corruption" or "permanent incorrigibility" is not a fact finding, but represents a decision that the sentence was not disproportionate.

While Skinner suggests that the Supreme Court's requirement that the crime reflect a permanent irreformable character is a necessary factual predicate to imposing a life-without-parole sentence, the majority in *Skinner* makes the argument expressly. Slip op, p 19 ("Thus, the factual finding of 'irreparable corruption' aggravates—not mitigates—the penalty[.]") (internal quotes omitted). But this argument misunderstands the role that this conclusion plays in the decision on whether to impose a life-without-parole sentence.

One of the central points of *Miller* and *Montgomery* is that juvenile offenders are different from adult offenders in their ability to reform. According to the Court, the young have a greater ability to be rehabilitated. *Miller,* 132 S Ct at 2464 ("juveniles have diminished culpability and greater prospects for reform"); *Montgomery,* 136 S Ct at 734 (same). For this reason, it contrasts "transient immaturity" with "irreparable corruption" and "permanent incorrigibility." *Miller,* 132 S Ct at 2469 ("irreparable corruption"); *Montgomery,* 168 S Ct at 735 ("permanent incorrigibility"). For those crimes that reflect these later two descriptions, these are the only juveniles who may be constitutionally sentenced to life without parole:

> But given all we have said in *Roper*, *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between "the juvenile offender whose crime reflects unfortunate yet ***transient immaturity***, and the rare juvenile offender whose crime reflects ***irreparable corruption***."

> Although we do not foreclose a sentencer's ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison. [*Miller,* 132 S Ct at 2469 (emphasis and paragraph break added), citing *Roper v Simmons,* 543 US 551 (2005), and *Graham v Florida,* 560 US 48 (2010).]

Montgomery makes the same point:

> *Miller* did bar life without parole, however, for all but the rarest of juvenile offenders, those whose crimes reflect ***permanent incorrigibility***. [*Montgomery,* 136 S Ct at 735 (emphasis added).]

For that reason, the Court could then further explain that life without parole was excluded as an "unconstitutional penalty" for juvenile offenders as "a class" for those "whose crime reflect the transient immaturity of youth." *Id.* at 728 (internal quotes omitted), citing *Penry v Lynaugh,* 492 US 302, 330 (1989).

But the issue whether the offender's crime reflects corruption and incorrigibility as a permanent matter is not a factual issue, but the ultimate exercise of sentencing discretion in reaching a judgment. It is like a conclusion of proportionality. See *Montgomery,* 136 S Ct at 726 ("the Court explained that a lifetime in prison is a *disproportionate* sentence for all but the rarest of children, those whose crimes reflect " 'irreparable *corruption*' "), quoting *Miller,* 132 S Ct at 2469 (emphases added). Proportionality is equated with irreparable corruption.

For that reason, the Court in *Montgomery* could then also state the equally true point that *Miller* did not establish any fact-finding requirement. 136 S Ct at 735 ("*Miller* did not impose a formal factfinding requirement"; "this finding [incorrigibility] is not required"). If "permanent corruption" were *a required fact finding*, the Court could not make these statements.

And this is the one of the overarching errors of Skinner and majority decision below. They read *Miller* and *Montgomery* to hold that irreparable corruption is a factual determination. It is not. The Court does identify genuine factors for a sentencing court to consider, such as "youth and its attendant characteristics," in making a decision about what sentence to impose:

> A hearing where "youth and its attendant characteristics" are considered as sentencing factors is necessary to separate those juveniles who may be sentenced to life without parole from those who may not. [*Montgomery,* 136 S Ct at 735.]

See also *Miller,* 132 S Ct at 2468 (listing at least five different factors). The life-without-parole sentence is appropriate only where the offender is irreparably corrupt. But no factual point is controlling in making this decision, as the Court has required only that the process be individualized. The other courts that have expressly addressed this issue about whether a jury is required have reached the same conclusion, apparently without exception. See, e.g., *Pennsylvania v Batts,* ___ A 3d ___ (Pa 2017) (June 26, 2017), slip op, p 78 ("We further disagree with Batts that a jury must make the finding regarding a juvenile's eligibility to be sentenced to life without parole"); *People v Blackwell,* 207 Cal Rptr 3d 444, 458–460 (2016) (rejecting the argument that a jury was necessary to make a factual determination of irreparable corruption before imposing LWOP); *Utah v Houston,* 353 P3d 55, 68 (Utah 2015) ("the *Apprendi* rule d[oes] not apply, and there is no violation"); *Louisiana v Fletcher,* 149 So3d 934, 943 (La Ct App 2014) (finding *Apprendi* inapplicable and stating that "*Miller* does not require proof of an additional element of 'irretrievable depravity' or 'irrevocable corruption.' ").

This conclusion also accords with the Supreme Court's suggestion that the burden to show the crime was not irreparably corrupt fell to the offender. *Montgomery,* 136 S Ct at 736 ("prisoners like Montgomery must be given *the opportunity to show* their crime did not reflect irreparable corruption.") (emphasis added). By statute, the sentencing court has been given the task of exercising its judgment and making this decision. And it bears repeating that the Court in *Montgomery* twice indicated that *Miller* expects these decisions to be made by "sentencing court[s]." *Id.* at 726, 734. It did not say juries.

The Sixth Amendment is not offended by Michigan's sentencing process, which accords with *Miller* and *Montgomery*. This Court should reverse and affirm the constitutionality of Michigan's scheme that places the decision on what sentence to impose on a juvenile murderer on the sentencing court.

CONCLUSION AND RELIEF REQUESTED

This Court should reverse the decision of the Michigan Court of Appeals and reinstate the trial court's sentence of life without parole.

Respectfully submitted,

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